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Commissioner, Michigan Public Service Commission



January 2, 2013

Ms. Cindy Bladey, Chief
Rules, Announcements, and Directives Branch
Office of Administration
Mail Stop: TWB-05-B01M
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

RE: Comments on Scope of Environmental Impact Statement Supporting the Rulemaking to Update the Waste Confidence Decision & Rule (Docket ID: NRC-2012-0246)

Dear Ms. Bladey:

The Nuclear Waste Strategy Coalition (NWSC) appreciates the opportunity to offer comments on the scope of the Environmental Impact Statement (EIS) for the NRC's updated Waste Confidence Decision and Rule.

Matters pertaining to waste confidence are important to our members, consisting of a number of state utility regulators, state consumer advocates, tribal governments, local governments, electric utilities, and others. The waste confidence process provides assurance to the public that the waste streams associated with nuclear power generation can be safely managed.

While the Nuclear Waste Policy Act (NWPA) lays out the nation's plan for nuclear waste management, that plan is not being followed. Therefore, we continue our plea for the federal government to carry out its obligations by taking prompt action to remove and dispose of used nuclear fuel and high-level waste from commercial nuclear power plant sites. Before and since the NWPA's passage, a range of experts have repeatedly recognized the need for the United States to establish a geologic repository for the disposal of used fuel, including as recently as almost one year ago in the report issued by the President's Blue Ribbon Commission on America's Nuclear Future. We believe that Yucca Mountain remains an option for such a geologic repository unless officially ruled out by scientific review or a future action of Congress or the courts. Unfortunately, despite the clear requirements of the NWPA, the President has stopped all work on the repository program there, and the NRC has stopped its review of the associated license application.

While small countries with limited repository options are proceeding responsibly to manage their used fuel, the United States, with its vast land mass, varied host environments for a repository, and

close to a \$30 billion balance in its Nuclear Waste Fund, does nothing. Despite the billions previously paid into this fund and continuing payments that total approximately \$750 million each year by electric consumers, the Department of Energy (DOE) is 15 years behind schedule, and the NRC must now devote two years and substantial resources to an EIS that would not have been necessary but for the federal government's inaction. If the federal government were to perform as Congress clearly intended and as DOE pledged in contracts with nuclear-generating electric utilities, it would obviate the need for long-term on-site storage and the associated extensive and costly litigation of matters pertaining to waste confidence.

In light of the Administration's decision to completely halt work on the statutory repository program at Yucca Mountain and a reluctance to advance measures to provide assurance of a viable long-term strategy, the instant environmental review has been deemed necessary by the U.S. Court of Appeals for the D.C. Circuit (Court). Therefore, we offer our general thoughts on the overall process and the scope of the EIS.

NRC Process & Schedule

The NRC clearly recognizes the importance of addressing the deficiencies identified by the Court in a timely manner. "Resolving this issue successfully is a Commission priority," said NRC Chairman Macfarlane on the day the Commission initiated the EIS and revised waste confidence decision and rule. Such statements by NRC's leadership, the ambitious 2-year schedule, numerous opportunities for public participation, and the newly created Waste Confidence Directorate are all indicators of the Commission's commitment to fully but efficiently respond to the Court's concerns. Particularly because delay could detrimentally affect proceedings designed to determine the public interest in licensing matters, we urge that the proposed 24-month schedule be maintained.

EIS Scope

The EIS scope should be limited to the three specific deficiencies identified by the Court in the NRC's NEPA analysis supporting the NRC's 2010 update. That will better enable the NRC to focus its efforts and resources to ensure proper evaluation of the identified areas. The NRC proceeding is not the proper vehicle for a broader examination of its spent fuel storage, transportation, and disposition regulatory program. Also, while we are respectful of certain site-specific concerns raised by other stakeholders, the NRC should not examine site-specific issues in this proceeding; those are better addressed in other proceedings.

We understand that NRC will examine the impacts of three potential scenarios, including continued storage in the event a repository does not become available. Although we do not disagree with the use of the scenarios, we stress that we cannot accept that a repository will never be made available. However, we believe that the NRC's analysis will highlight the disruptive impacts of this unlikely "no repository" scenario and demonstrate the need for prompt action.

Outreach

The NWSC appreciates NRC's efforts to hear from the public and other stakeholders via a number of meetings, webinars, and comment periods associated with the instant two-year process. We respectfully request that the NRC make a concerted effort to consult with affected stakeholders,

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including licensees, states, tribes, and local communities, throughout the Waste Confidence review process as is feasible under the schedule.

Indefinite Storage Unacceptable

The federal government has a legal and moral obligation to move forward on a repository program, and used nuclear fuel and high-level waste must not be indefinitely stored. As mentioned previously, the federal government is responsible for taking action in accordance with the provisions of the NWPA. The best way to avoid further delay and convince the public that the federal government takes its obligation to solve this national problem seriously is for the NRC to immediately resume its key role in the federal disposal program – review of the license application for a repository at Yucca Mountain.

* * *

In closing, we ask the NRC to do everything in its power to advance, and at a minimum to not hinder, a sound national used fuel management policy. Specifically, the NRC should:

1. Continue to adhere to the principle that the NRC does not endorse the indefinite on-site storage of used nuclear fuel and high-level waste;
2. Make clear to DOE that the status quo is unacceptable, that it expects DOE to demonstrate near-term progress toward fulfilling its unambiguous obligations under the law so that extended on-site storage is not needed;
3. Act in a manner that comports with and promotes the goals of the NWPA; and
4. Resume, and seek any necessary funding to complete, the review of the license application for Yucca Mountain that was submitted by DOE in 2008.

Such leadership demonstrated by NRC would go a long way toward restoring trust in the federal government on these issues.

Thank you for the opportunity to provide our input on behalf of our members and the consumers and citizens that they collectively serve, and we look forward to working with you on future steps in the process.

Sincerely,



David A. Wright

Chairman, Nuclear Waste Strategy Coalition

Chairman, South Carolina Public Service Commission

The [Nuclear Waste Strategy Coalition](#) is an ad hoc organization representing the collective interests of numerous state utility commissions, state consumer advocates, tribal governments, local governments, electric utilities, and associate members on nuclear waste policy matters. NWSC's primary focus is to protect ratepayer payments into the Nuclear Waste Fund and to support the removal and ultimate disposal of spent nuclear fuel and high-level radioactive waste currently stranded at some 125 commercial, defense, research, and decommissioned sites in 39 states.